

1 it. But tell me, what Judge would not approve a
2 settlement which appears to have been either agreed to
3 by all of the beneficiaries, or if not, that certain
4 interested parties did not file an answer, or in fact,
5 said they either won't attend or they have no
6 objection?

7 MR. MC CARTER: Well, Your Honor, I can
8 answer all those questions. I think you're asking me
9 almost to give my summation with a witness --

10 THE COURT: Well, you know why --

11 MR. MC CARTER: -- here on the stand.

12 THE COURT: -- I need it, Mr. McCarter, is
13 because I want to protect your clients. I realize that
14 they were pro se at the time. And I realize that this
15 is very sensitive when you're dealing with the duties
16 of executors as fiduciaries. And the corresponding
17 obligation that a beneficiary has to act reasonably.

18 You know, there's -- what is that sign where
19 they have the three monkeys and one has a hand over the
20 eyes, the other one has the hand over the ears and the
21 other one has a hand over the mouth. Well, the point
22 is that your clients have a concomitant obligation not
23 to just sit there as spectators.

24 I want to find out what the players were
25 doing. And I want to know what you expect of the

1 players if your clients didn't go down on the field and
2 involve themselves in the game.

3 MR. MC CARTER: Okay. May -- I will
4 respond, Your Honor. May I?

5 THE COURT: Yes.

6 MR. MC CARTER: Okay. One premise that was
7 wrong in your description of our position is that we
8 expected that U.S. Trust Company would never agree to a
9 settlement and would fight it all the way. That's not
10 what we expected.

11 What we expected was if U.S. Trust Company
12 changed its mind and decided to settle, and decided to
13 settle in a way that was adverse to us, it would make
14 sure that we knew about it.

15 THE COURT: Why? Your clients never
16 appeared.

17 MR. MC CARTER: Because they --

18 THE COURT: They weren't players any more.

19 MR. MC CARTER: They were players, Your
20 Honor. This is a case of fiduciary self-dealing.
21 There can be no question that the settlement that was
22 arrived at was self-dealing by both U.S. Trust Company
23 and Mr. Wallace.

24 THE COURT: Look, I wasn't born yesterday.
25 I understand the point you were making with Mr. Hockey.